

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: HERITAGE LAND COMPANY,) E-Filed: 05/18/09
LLC,)

5 Debtor.)

) Case No.

6) BK-S-09-14778-LBR

) Chapter 11

7 THE RHODES COMPANIES, LLC,)

8 Debtor.)

) Case No.

) BK-S-09-14814-LBR

9) Chapter 11

10
11 TRANSCRIPT OF PROCEEDINGS
OF

12 (09-14778) FINAL HEARING

13 RE: MOTION TO USE CASH COLLATERAL FOR INTERIM AND FINAL ORDERS
PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364
14 OF DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS
PURSUANT TO 105, 361, 362, 363, AND 364
OF THE BANKRUPTCY CODE,

15 (A), AUTHORIZING DEBTORS TO USE CASH COLLATERAL,

16 (B), GRANTING ADEQUATE PROTECTION

TO THE DEBTOR'S PREPETITION SECURED PARTIES,

17 AND, (C), SCHEDULING A FINAL HEARING;

MEMORANDUM OF POINTS AND AUTHORITIES, NO. 119

AND

18 (09-14814) FINAL HEARING

19 RE: (COPY) DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS
PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364
20 OF DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS
PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364
OF THE BANKRUPTCY CODE,

21 (A), AUTHORIZING DEBTORS TO USE CASH COLLATERAL,

22 (B), GRANTING ADEQUATE PROTECTION

TO THE DEBTOR'S PREPETITION SECURED PARTIES,

23 AND, (C), SCHEDULING A FINAL HEARING;

MEMORANDUM OF POINTS AND AUTHORITIES, NO. 16

AND
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1 (09-14778) ORDER SHORTENING TIME
2 RE: APPLICATION FOR AN ORDER
3 UNDER SECTION 366 OF THE BANKRUPTCY CODE,
4 (A), PROHIBITING UTILITY PROVIDERS
5 FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE,
6 (B), DEEMING UTILITIES ADEQUATELY ASSURED
7 OF FUTURE PERFORMANCE,
8 AND, (C), ESTABLISHING PROCEDURES
9 FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT;
10 MEMORANDUM OF POINTS AND AUTHORITIES, NO. 58
11 AND
12 (09-14814) (COPY) DEBTOR'S MOTION FOR AN ORDER
13 UNDER SECTION 366 OF THE BANKRUPTCY CODE,
14 (A), PROHIBITING UTILITY PROVIDERS
15 FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE,
16 (B), DEEMING UTILITIES ADEQUATELY ASSURED
17 OF FUTURE PERFORMANCE,
18 AND, (C), ESTABLISHING PROCEDURES
19 FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT, NO. 16
20 AND
21 (COPY) DEBTOR'S MOTION PURSUANT TO BANKRUPTCY CODE
22 SECTIONS 105(A), 363, AND 507(A)
23 FOR AN ORDER AUTHORIZING THE DEBTORS TO,
24 (I), PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS,
25 AND OTHER COMPENSATION;
(II), REMIT WITHHOLDING OBLIGATIONS;
AND, (III), MAINTAIN EMPLOYEE, NO. 8
AND
(COPY) MOTION FOR ENTRY OF AN ORDER
PURSUANT TO SECTIONS 105(A), 363(C), 1107(A), AND 1108
OF THE BANKRUPTCY CODE
AUTHORIZING THE DEBTORS TO HONOR PREPETITION OBLIGATIONS
TO CUSTOMERS
AND TO OTHERWISE CONTINUE CUSTOMER PRACTICES AND PROGRAMS
IN THE ORDINARY COURSE OF BUSINESS, NO. 16
AND
(COPY) DEBTOR'S MOTION
FOR UNDER 11, USC, 105, 363, 503(B),
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(I), MAINTENANCE OF CERTAIN EXISTING BANK ACCOUNTS,
(II), CONTINUED USE OF EXISTING BUSINESS FORMS,
(III), CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM,
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(II), ESTABLISHING PROCEDURES FOR THE RESOLUTION AND PAYMENT
OF LIENS AND CLAIMS, NO. 16

1 (09-14778) ORDER SHORTENING TIME
2 RE: MOTION TO APPOINT TRUSTEE
3 OR, IN THE ALTERNATIVE,
4 DISMISSING THE DEBTOR'S CHAPTER 11 CASES, NO. 121
5 AND

6 (09-14814) ORDER SHORTENING TIME
7 RE: MOTION TO STRIKE INADMISSIBLE HEARSAY
8 IN OBJECTION OF THE FIRST LIEN STEERING COMMITTEE
9 TO THE DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS
10 PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364
11 OF THE BANKRUPTCY CODE,
12 (A), AUTHORIZING DEBTORS TO USE CASH COLLATERAL,
13 (B), GRANTING ADEQUATE PROTECTION
14 TO THE DEBTOR'S PREPETITION SECURED PARTIES,
15 AND, (C), SCHEDULING A FINAL HEARING, NO. 55
16 AND

17 ORDER SHORTENING TIME
18 RE: (COPY) MOTION BY THE FIRST LIEN STEERING COMMITTEE
19 FOR AN ORDER DIRECTING THE APPOINTMENT OF A TRUSTEE
20 PURSUANT TO 11, USC, 1104(A)
21 OR, IN THE ALTERNATIVE,
22 DISMISSING THE DEBTOR'S CHAPTER 11 CASES
23 PURSUANT TO 11, USC, 1112(B), NO. 69
24 VOLUME 1
25 BEFORE THE HONORABLE LINDA B. RIEGLE
UNITED STATES BANKRUPTCY JUDGE

Friday, April 17, 2009

9:30 a.m.

23 Court Recorder: Helen C. Smith

24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

1 APPEARANCES:

2 For the Rhodes
3 Entities:ZACHARIAH LARSON, ESQ.
Larson & Stephens, LLC
810 South Casino Center Boulevard
Suite 104
Las Vegas, Nevada 891015 JAMES I. STANG, ESQ.
6 SHIRLEY S. CHO, ESQ.
7 ALAN J. KORNFELD, ESQ.
Pachulski, Stang, Ziehl & Jones, LLP
10100 Santa Monica Boulevard
Eleventh Floor
8 Los Angeles, California 900679 For James Rhodes
10 and Sagebrush
11 Enterprises, Inc.:BRETT A. AXELROD, ESQ.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway
Suite 500-N
Las Vegas, Nevada 8916912 For the First
13 Lienholders Steering
14 Committee:TIMOTHY P. THOMAS, ESQ.
Kolesar & Leatham, Chtd.
3320 West Sahara Avenue
Suite 380
Las Vegas, Nevada 8910215 PHILIP C. DUBLIN, ESQ.
16 ABID QURESHI, ESQ.
Akin, Gump, Strauss, Hauer & Feld, LLP
One Bryant Park
17 New York, New York 1003618 For Credit Suisse,
19 Cayman Islands Branch:RAMON M. NAGUIAT, ESQ.
Skadden, Arps, Slate, Meagher
& Flom, LLP, and Affiliates
300 South Grand Avenue
Suite 3400
20 Los Angeles, California 9007121 For the United States
22 Trustee:AUGUST B. LANDIS, ESQ.
Office of the United States Trustee
300 Las Vegas Boulevard South
Suite 4300
23 Las Vegas, Nevada 89101
24
25

1 APPEARANCES (Cont.):

2 For NV Energy: KIRBY C. GRUCHOW, JR., ESQ.
3 Leach, Johnson, Song & Gruchow
4 5495 South Rainbow Boulevard
Suite 202
Las Vegas, Nevada 89118

5 For Wells Fargo Bank, DON S. DeAMICIS, ESQ.
6 N.A.: Ropes & Gray, LLP
One International Place
7 Boston, Massachusetts 02110

8 Also Present: PAUL HUYGENS
9 Consultant
Heritage Land Company, LLC

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1 (Court convened at 09:37:05 a.m.)

2 THE CLERK: Bankruptcy court is now in session.

3 THE COURT: Be seated. Okay.

4 (Colloquy not on the record.)

5 THE COURT: Darla, I left that beautiful chart on my
6 desk. Do you want Susan to get it or do you want to take
7 appearances first?

8 UNIDENTIFIED SPEAKER: I have a spare one --

9 THE COURT: Be seated.

10 UNIDENTIFIED SPEAKER: -- your Honor.

11 THE COURT: Oh, okay. We got a spare one. Thanks.
12 Be seated. Sorry.

13 UNIDENTIFIED SPEAKER: May I approach, your Honor?

14 THE COURT: I was just so taken aback by it that I
15 immediately sent it out for framing, and --

16 (Colloquy not on the record.)

17 THE COURT: All right. Rhodes Companies.
18 Appearances, please.

19 MR. LARSON: Good morning, your Honor. Zach Larson,
20 local counsel, for the Rhodes entities.

21 MR. STANG: Good morning, your Honor. James Stang,
22 Shirley Cho, and Alan Kornfeld, Pachulski, Stang, Ziehl
23 & Jones, for the debtor.

24 MS. AXELROD: Good morning, your Honor.
25 Brett Axelrod, Greenberg Traurig, for James Rhodes and

1 Sagebrush Enterprises.

2 MR. THOMAS: Good morning, your Honor. Tim Thomas,
3 local counsel for the First Lienholders Steering Committee and
4 also Philip Dublin and Abid Qureshi from Akin, Gump.

5 MR. NAGUIAT: Good morning, your Honor. Ray Naguiat
6 from Skadden, Arps on behalf of Credit Suisse.

7 MR. LANDIS: Good morning, Judge. Augie Landis,
8 Assistant United States Trustee.

9 THE COURT: All right. Excuse me. It's the change
10 in weather.

11 Since we've got this lovely chart, why don't we start with
12 just a status report, and I think I understand things now, but
13 I think it will be helpful before we start everything, and then
14 I'll have you give me a status report on where we are or are
15 not today.

16 MR. STANG: Well, your Honor, James Stang for the
17 debtors. I'm not sure love is exactly breaking out all over.

18 (Colloquy not on the record.)

19 MR. STANG: But we certainly are making a lot of
20 progress towards not just a final cash-collateral order. We
21 hadn't submitted a second interim, but, also, discussions have
22 started in detail with the First Lien Steering Committee on
23 plans of reorganization for all the debtors.

24 We have been working now not just with the Steering
25 Committee, but with the first agent, the second agent,

1 obviously, Sagebrush through Ms. Axelrod with the U.S. Trustee,
2 and we are starting to get a little more in sync on getting
3 orders reviewed and signed off by him and that office.

4 And so we are very optimistic that the case is getting on
5 the right track, and that we are moving quickly towards a plan
6 term sheet that will enable us to quickly move towards a plan
7 and confirmation.

8 There are a lot of moving parts as much, frankly, on the
9 lenders' side as the business side. We've got a
10 Steering Committee. It has a certain percentage of the
11 first-lien people on it. There's a lot of overlap between the
12 first lien and the second liens.

13 So with so many cats which includes us having to be
14 herded, we're very optimistic that we're moving the case
15 forward.

16 THE COURT: Okay. And where are we on appointing an
17 Unsecured Creditors Committee? I know it's early, and you just
18 got the information, but --

19 MR. LANDIS: Augie Landis, Assistant United States
20 Trustee. I knew you would ask, so I actually prepared.

21 We have solicited the combined list of unsecured creditors
22 that was provided by the debtors at the inception of the case.
23 We did that immediately after the cases were filed.

24 We allowed a response time which just expired a couple of
25 days ago earlier this week. Here's the summary of where that

1 is at.

2 Seven creditor responses were received. Four were not
3 willing to serve. Three are willing to serve, but one of those
4 is a mechanic's lienholder, so they really weren't an unsecured
5 creditor, and they're probably not qualified to serve.

6 At this point, we don't have sufficient creditor interest
7 to form. I don't think that will stay the case, but I don't
8 know who else to call or write --

9 THE COURT: Sure.

10 MR. LANDIS: -- or solicit.

11 Once we have schedules or if we have supplemental
12 information from the debtors with respect to who might be
13 interested or qualified, we can pursue the matter further, but
14 we will continue to do that.

15 And I'm mindful of the fact that once we know who the
16 whole body of unsecured creditors are there will be other
17 people that we can tap.

18 We've done what we can at this juncture. We're not able
19 to appoint a committee right now.

20 THE COURT: Okay. Okay. All right.

21 MR. STANG: In addition, your Honor, the debtors are
22 having their initial debtor interview with the U.S. Trustee's
23 Office this afternoon.

24 THE COURT: Okay. Now, I haven't had a chance to
25 digest the pros version of the organizational chart if you

1 will, so why don't we spend a few minutes. If you'd fill me in
2 on the businesses of each of these just starting at left to
3 right.

4 The Rhodes Companies --

5 MR. STANG: Well --

6 THE COURT: -- is a holding. Why don't you just go
7 through and explain. I understand now which are the holding
8 companies, and then when you get to the operating entities what
9 is the business of those operating entities.

10 MR. STANG: Okay. Well, your Honor, you have a group
11 of what we call the nonoperating and the wind-down, and those
12 are -- I'm a little color blind, actually, but those are kind
13 of the bluish ones, and some of them haven't operated for a
14 while, frankly.

15 And then you've got the holding and investment which are
16 relative dormant as well, and then the operating entities. And
17 while I'm generally familiar with these, I am going to have to
18 do a page turn --

19 THE COURT: Sure.

20 MR. STANG: -- through the specific ones, so let's
21 see.

22 If we use the chart that's got the spreadsheet-type
23 approach, we start with Elkhorn Partners which is -- well,
24 maybe we should start.

25 The Rhodes Companies, LLC, and Heritage Land are holding

1 companies. You've got then Rhodes Ranch GP, so let me just --

2 THE COURT: And Rhodes Ranch GP owns

3 Rhodes Ranch Golf & Country Club, LLC.

4 MR. STANG: Yes.

5 THE COURT: So while we're at that one --

6 MR. STANG: Well, and --

7 THE COURT: -- what does Rhodes Ranch --

8 MR. STANG: Well --

9 THE COURT: Rhodes Ranch Golf & Country Club, LLC,
10 what's its business?

11 MR. STANG: Well, that property, the golf-course
12 property --

13 (Colloquy not on the record.)

14 MR. STANG: I'll try.

15 THE COURT: He's got to learn it --

16 MR. STANG: Well, yeah, I do.

17 THE COURT: -- sometimes.

18 MR. STANG: You got to start at the disclosure
19 statement, yeah. Actually, your Honor, I could do this, but it
20 might be, frankly, a little more fluid and comprehensible if
21 Mr. Huygens came up --

22 THE COURT: That's fine.

23 MR. STANG: -- and did it. Okay.

24 (Colloquy not on the record.)

25 MR. STANG: He didn't get to be deposed yesterday

1 because we reached a stipulation, so he's dying to speak in
2 front of a microphone.

3 MR. HUYGENS: I couldn't be more thrilled.

4 THE COURT: State your name again, please.

5 THE COURT RECORDER: (Indiscernible) your name,
6 please?

7 MR. HUYGENS: Paul Huygens.

8 THE COURT: Okay.

9 MR. HUYGENS: That's H-u-y-g-e-n-s. Perfect. Okay.
10 So starting on the left, the Rhodes Companies, LLC, that's a
11 holding company for the operating entities --

12 THE COURT: Okay.

13 MR. HUYGENS: -- generally what we call the operating
14 entities. Over on the right, Heritage Land Company on that,
15 and I'll work from top to bottom.

16 THE COURT: Great.

17 MR. HUYGENS: That's a holding company for
18 nonoperating companies, landholding companies, companies that
19 don't do any development work, just hold land.

20 THE COURT: Okay. So, for example, if it's going
21 down to the entities that it owns 99 percent of, Tick,
22 Jackknife, Batcave, Overflow, Wallboard, Chalkline, they own
23 real property on their own?

24 MR. HUYGENS: That's correct, and that's actually
25 where the bulk of the value of the estate is.

1 THE COURT: And is it like just a lot or is it acres
2 or --

3 MR. HUYGENS: Acres, yeah.

4 THE COURT: Acres.

5 MR. HUYGENS: And it depends on the entity, but it
6 could be 20 acres to 50 acres --

7 THE COURT: Okay.

8 MR. HUYGENS: -- to tavern sites, you know --

9 THE COURT: Unimproved --

10 MR. HUYGENS: -- things of that nature.

11 THE COURT: -- acres or --

12 MR. HUYGENS: Well, superpadded acres, so that they
13 were --

14 THE COURT: Oh, superpadded. Okay.

15 MR. HUYGENS: Correct. But no --

16 THE COURT: Now --

17 MR. HUYGENS: -- on-site development would be done in
18 those holding companies, Tick through Chalkline.

19 THE COURT: Okay. And Glynda, it says nonoperating
20 wind-down. Does it still own this acreage?

21 MR. HUYGENS: No. It sold the acreage to a company
22 called Parcel 20, LLC, which is one of the operating entities
23 on the far right in the green.

24 THE COURT: Oh, okay.

25 MR. HUYGENS: That's in the middle of the page.

1 THE COURT: Okay.

2 MR. HUYGENS: So, essentially, what happens is when
3 the company is ready to develop a piece of property it moves
4 from a nonoperating company to an operating company, and the
5 operating companies typically hold one development or an
6 accumulation of subdivisions that are discrete. So to the
7 extent that there were issues within that company, it wouldn't
8 spill into the broader group.

9 THE COURT: Okay. So then going back up, then, we've
10 got Heritage which owns 99 percent of those entities that hold
11 the land.

12 MR. HUYGENS: Um-h'm.

13 THE COURT: And then one percent is held by the
14 Rhodes Companies?

15 MR. HUYGENS: That's correct.

16 THE COURT: I thought you had indicated it was a
17 private trust before or you just -- the last time, I thought it
18 said it was owned by a private trust.

19 MR. HUYGENS: Well, Heritage Land Company is
20 ultimately owned 94 percent by Sedora Holdings which is then
21 owned by a private trust.

22 THE COURT: Okay.

23 MR. HUYGENS: The one-percent interest --

24 THE COURT: But --

25 MR. HUYGENS: -- is a general-partnership interest --

1 THE COURT: Okay.

2 MR. HUYGENS: -- to the Rhodes Companies.

3 THE COURT: Okay. All right. So then going back in
4 the middle I guess Rhodes Ranch General Partnership which is
5 owned partly by a nondebtor and the rest by Rhodes Companies?

6 MR. HUYGENS: That's correct.

7 THE COURT: Okay. And what's the business of
8 Rhodes Ranch General Partnership? Oh, it just holds the
9 interest of Rhodes Ranch Golf & Country Club?

10 MR. HUYGENS: Well, no. Rhodes Ranch
11 General Partnership holds the interest in Rhodes Ranch
12 Golf & Country Club -- or excuse me. It used to. It sold that
13 interest in December of 2008.

14 But it also is a developer of real property as well, so
15 there are remnant subdivisions in Rhodes Ranch, both active and
16 inactive remnant subdivisions in Rhodes Ranch
17 General Partnership, within the Rhodes Ranch master
18 development.

19 THE COURT: Okay. But Rhodes Ranch Golf & Country --
20 did you say Rhodes Ranch General Partnership sold its interest
21 in Rhodes Ranch Golf & Country Club, LLC --

22 MR. HUYGENS: At --

23 THE COURT: -- or Rhodes Ranch Golf & Country Club
24 sold what it owned?

25 MR. HUYGENS: Yeah. The latter.

1 THE COURT: Okay. So Rhodes Ranch --

2 MR. HUYGENS: It was an asset sale.

3 THE COURT: -- doesn't own anything, anymore.

4 MR. HUYGENS: It has some wind-down miscellaneous --

5 THE COURT: Okay.

6 MR. HUYGENS: -- very small cash balances and
7 payables.

8 THE COURT: Okay.

9 MR. HUYGENS: I think it's maybe 50,000 or so.

10 THE COURT: Okay. Okay.

11 MR. HUYGENS: So then moving down into I guess the
12 middle of the table working from left to right,
13 Elkhorn Investments primarily is a holding company for
14 Elkhorn Partners.

15 Elkhorn Partners developed a series of subdivisions in the
16 northern part of the valley many years ago. At this point, it
17 has one house left in it.

18 THE COURT: Um-h'm.

19 MR. HUYGENS: And I know this is confusing, but
20 Elkhorn Investments also has a few pieces of property in
21 Arizona as well just to make it more interesting.

22 THE COURT: And that's Investments holds the interest
23 in Partners, and Partners owns the house and the property; is
24 that correct?

25 MR. HUYGENS: No. Partners owns the one house.

1 THE COURT: Okay.

2 MR. HUYGENS: And then Investments own a few pieces
3 of real property --

4 THE COURT: Oh, okay.

5 MR. HUYGENS: -- value wise fairly inconsequential
6 relative to the rest of the organization.

7 THE COURT: Okay.

8 MR. HUYGENS: Six Feathers Holding was never used.

9 THE COURT: Okay.

10 MR. HUYGENS: So it should have been shut down. Then
11 Tribes Holdings --

12 THE COURT: Um-h'm.

13 MR. HUYGENS: -- they used to be a holding company
14 for a series of subcontractor entities.

15 THE COURT: Um-h'm.

16 MR. HUYGENS: And they're all appropriately labelled.
17 Well, Bravo, Inc., was a framing company. The operations of
18 Bravo, Inc., were wound down in 2006.

19 THE COURT: Okay.

20 MR. HUYGENS: And those operations were moved to
21 Apache Framing which was wound down in 2008.

22 THE COURT: Okay.

23 MR. HUYGENS: And then Gung-Ho Concrete and
24 Geronimo Plumbing were wound down either late of '07 or early
25 of '08.

1 THE COURT: And when you say wound down, do you mean
2 it -- maybe I'm asking for a legal opinion. Do you mean wound
3 down in the corporate legalistic sense or wound down in the
4 sense of you just ceased doing operations?

5 MR. HUYGENS: Correct. We've finished the jobs, the
6 subcontracting jobs, that were either with the Rhodes affiliate
7 entities, you know, part of this chart or with third parties.

8 The staff were laid off or absorbed in other parts of the
9 business. The equipment has been sold for the most part.
10 There are, you know, miscellaneous items left.

11 THE COURT: Okay.

12 MR. HUYGENS: That we got out of the leases, you
13 know, those sorts of things, but there are still again
14 small-dollar items that have to be incurred to just finish --

15 THE COURT: Okay.

16 MR. HUYGENS: -- the job.

17 THE COURT: Okay.

18 MR. HUYGENS: Then moving across also in the middle
19 to Jarupa, LLC --

20 THE COURT: And Tribes owned nothing except its
21 interest in those companies that have been wound down?

22 MR. HUYGENS: That's correct.

23 THE COURT: Okay.

24 MR. HUYGENS: And when you get an opportunity to go
25 through the by-entity summary pages --

1 THE COURT: Um-h'm.

2 MR. HUYGENS: -- we didn't even break these entities
3 out separately. We rolled them into Tribes, consolidated,
4 because the numbers are --

5 THE COURT: Okay.

6 MR. HUYGENS: -- really pretty inconsequential.
7 Jarupa, LLC, was set up to be the development entity for the
8 property that's held by Chalkline --

9 THE COURT: Um-h'm.

10 MR. HUYGENS: -- but it was never used. The product
11 that was designed when the market fell apart was no longer
12 appropriate.

13 And so there was some abandonment costs for the incurred
14 engineering and design costs in Jarupa, LLC. Those were
15 written off in 2008, and now it's just a shell and will go
16 away, no payables or anything of that nature.

17 Moving to the right, C&J Holdings, that's a d/b/a,
18 Neighborhood Association Group, and that's an association
19 management company.

20 THE COURT: And does it manage a homeowner
21 association besides Rhodes Ranch ones or --

22 MR. HUYGENS: Yeah. It manages Rhodes Ranch.

23 THE COURT: Uh-huh.

24 MR. HUYGENS: It manages Tuscany, Shailon (phonetic)
25 which is a small 45-unit subdivision, Exit (phonetic), and --

1 THE COURT: What I mean, it doesn't limit its
2 management to developments that were either developed or still
3 owned by Rhodes.

4 MR. HUYGENS: It does limit --

5 THE COURT: It does.

6 MR. HUYGENS: -- its management.

7 THE COURT: Okay.

8 MR. HUYGENS: Yes.

9 THE COURT: Thank you. And when I say Rhodes, I'm
10 talking about the ecliptic, obviously.

11 MR. HUYGENS: Correct. Rhodes Design & Development,
12 it's sort of the hub of the wagon wheel. It's the corporate
13 entity. It employs the staff for the Nevada development
14 business.

15 It holds the general-contractor's license, and so it's a
16 signator on all of the subcontractor contracts along with the
17 entity that's developing it which may be Tuscany Acquisitions.

18 THE COURT: Okay.

19 MR. HUYGENS: It may be Rhodes Ranch
20 General Partnership, that kind of a thing, and then its
21 incurred overhead is allocated out based upon costs incurred
22 throughout the rest of the development business. And so in a
23 normal market, it would be a break-even corporate enterprise.

24 THE COURT: Okay.

25 MR. HUYGENS: But that's where you're going to find

1 the majority of the payables. Rhodes Realty is a brokerage
2 business.

3 It's a sales-and-marketing arm of the overall company for
4 the Nevada developments, so it employs the sales staff. It
5 pays for all the marketing and advertising and pays for the
6 external brokerage commissions that are involved in a home
7 sale.

8 THE COURT: As opposed to design and development, the
9 marketing people are separated out into Rhodes Realty as
10 opposed to design and development.

11 MR. HUYGENS: That's correct.

12 THE COURT: Okay.

13 MR. HUYGENS: That's just a mechanism to hold the
14 sales manager accountable for his own profit-and-loss
15 statement.

16 THE COURT: And this goes towards any of the
17 developments by Rhodes Companies in any of the states.

18 MR. HUYGENS: No. Just for the state of Nevada.

19 THE COURT: Just Nevada.

20 MR. HUYGENS: Yeah.

21 THE COURT: Okay.

22 MR. HUYGENS: And then Rhodes Arizona Properties,
23 LLC --

24 THE COURT: Um-h'm.

25 MR. HUYGENS: -- is similar to Rhodes Realty --

1 THE COURT: Okay.

2 MR. HUYGENS: -- but for Arizona --

3 THE COURT: Okay.

4 MR. HUYGENS: -- sales and marketing.

5 THE COURT: Okay.

6 MR. HUYGENS: Rhodes Homes Arizona is the development
7 company for the Pravada master plan which is just outside of
8 Kingman, Arizona.

9 THE COURT: And where is that -- no. I don't mean --
10 I know outside Kingman. What progress wise? What's the status
11 of that project?

12 MR. HUYGENS: There have been several-thousand lots
13 that have been graded. The golf course has been graded.

14 The majority of the off-site water infrastructure has been
15 completed, wells drilled and pipes run, and things of that
16 nature.

17 Planning has been done around drainage and things of that
18 nature, but we've put down no asphalt, curb, gutter, sidewalks,
19 streetlights, that kind of a thing.

20 THE COURT: So do we have any homeowners who have
21 made deposits on any of these properties, yet?

22 MR. HUYGENS: Yes, we do. Well, reservations --

23 THE COURT: Okay.

24 MR. HUYGENS: -- on deposits.

25 THE COURT: Okay.

1 MR. HUYGENS: The state of Arizona requires those
2 deposits to be held in a trust account with an escrow company,
3 and I don't recall how many of them there are left.

4 At the peak of the market, there were 2500 reservations or
5 somewhere thereabouts. I think there's several hundred now
6 between 1,000 and \$2,000 apiece, but, again, held in a trust
7 account segregated.

8 THE COURT: Okay.

9 MR. HUYGENS: And, you know, it would be our
10 intention to continue to develop that project and deliver those
11 homes.

12 Pinnacle Grading is a grading and excavation company. It
13 was set up to do the grading and excavation work initially for
14 the Pravada master plan.

15 During 2005, '6, and '7, it was difficult if not
16 impossible to get that company, a grading and excavation
17 company, to come down to Kingman and do work, and so we set up
18 our own.

19 When the grading work was complete at Pravada, they
20 started doing other work, Public Works projects and things of
21 that nature, in the state of Arizona.

22 And they have two projects that are ongoing now, and one
23 is the City of Flagstaff Redevelopment Project, and it's
24 roughly a \$20,000,000 project, and then the other is a
25 detention center in Kingman, but we're talking about just the

1 horizontal work, not the vertical construction.

2 THE COURT: Right.

3 MR. HUYGENS: Tuscany Golf & Country Club is just
4 that, a golf and country club.

5 THE COURT: Is that in Nevada?

6 MR. HUYGENS: Yeah. Correct. That's the centerpiece
7 of the Tuscany master plan in Henderson.

8 THE COURT: And that's completed?

9 MR. HUYGENS: Correct. Yeah. It's been open since I
10 want to say about 2004 maybe.

11 THE COURT: And it has, what, dues? How does it
12 maintain its operation?

13 MR. HUYGENS: It's a public course.

14 THE COURT: Oh, it's a public course.

15 MR. HUYGENS: Yeah. So it's in a gated community --

16 THE COURT: I haven't been to Henderson --

17 MR. HUYGENS: -- but it's open to the public.

18 THE COURT: -- in years. That's how parochial we are
19 here.

20 MR. HUYGENS: Tuscany Acquisitions, LLC, through
21 Tuscany Acquisitions IV, LLC, the master developer for Tuscany
22 was a company called Commerce Associates.

23 In 2003 I believe it was, Rhodes negotiated a rolling
24 land-option agreement with Commerce, and that was executed I
25 want to say it was early 2004. It might have been late '03.

1 I'm not sure.

2 In any event, as those options were taken down or
3 exercised, they were put into single-purpose entities for each
4 takedown, and then many of the lots as part of those takedowns
5 have been developed, and there are homeowners living in homes.

6 THE COURT: So they're, what, custom houses is what
7 you're saying?

8 MR. HUYGENS: No. There were -- I'm guessing a
9 little bit -- but, roughly, 1,000 lots that were purchased over
10 the course of three years, and 6- or 700 of those had been sold
11 to homebuyers, built homes, sold to homebuyers, not sold as
12 lots.

13 THE COURT: Okay.

14 MR. HUYGENS: So the land was purchased in a superpad
15 condition. The land-development work was completed. Homes
16 were built in partnership with Rhodes Design & Development as
17 the general contractor.

18 And Rhodes Realty is the sales company, and the
19 Neighborhood Association Group is the management company to
20 build and sell houses --

21 THE COURT: Okay.

22 MR. HUYGENS: -- of which there were 650 or somewhere
23 thereabouts --

24 THE COURT: Okay.

25 MR. HUYGENS: -- now.

1 THE COURT: Okay. And then we have Acquisitions II?

2 MR. HUYGENS: Well, that's --

3 THE COURT: So each of these was a special-purpose
4 vehicles you were talking about.

5 MR. HUYGENS: That's correct.

6 THE COURT: Okay.

7 MR. HUYGENS: And each one has, you know, between 200
8 and 250 lots. That seemed to be about the size of each
9 takedown.

10 THE COURT: And so how many do each have left? About
11 that many left now?

12 MR. HUYGENS: Let's see. We would have I would say
13 5- to 600 lots left --

14 THE COURT: Total.

15 MR. HUYGENS: -- total --

16 THE COURT: Okay.

17 MR. HUYGENS: -- in those four entities.

18 THE COURT: Okay. And then Parcel --

19 MR. HUYGENS: And --

20 THE COURT: Oh, sorry.

21 MR. HUYGENS: I'm sorry. It may be 700. I'm
22 guessing a little bit there.

23 THE COURT: Okay. And they're in the condition where
24 they're pads. All the infrastructure's done around, but the
25 house itself has not been commenced.

1 MR. HUYGENS: Well, it's a mix. In some cases, the
2 streets, curb, gutter, sidewalk, streetlights, those kind of
3 things are in, and the lots are in a finished condition ready
4 for vertical construction.

5 And in some cases, the land option was exercised, but no
6 on-site development work was done to put the on-site streets
7 and sidewalks --

8 THE COURT: Okay.

9 MR. HUYGENS: -- and things of that nature.

10 THE COURT: Okay.

11 MR. HUYGENS: So it's a mix. It just depends on
12 which parcel, and there are many. There were ten or so
13 separate parcels that were exercised over four or five
14 different options.

15 THE COURT: And these are all in that Henderson
16 Tuscan development?

17 MR. HUYGENS: Correct.

18 THE COURT: Okay. And Commerce has no relationship
19 to any of the insiders, debtors, affiliates? It's a
20 separate --

21 MR. HUYGENS: No.

22 THE COURT: It was a separate entity?

23 MR. HUYGENS: A third party.

24 THE COURT: Okay. And then Parcel 20?

25 MR. HUYGENS: Parcel 20 is roughly a 100-acre piece

1 of property on the -- let's see. What is that -- the southwest
2 corner of the Rhodes Ranch master plan.

3 It's being developed in five phases. Two of those phrases
4 are under construction with houses being built and sold.
5 That's the primary area inside the gates at Rhodes Ranch where
6 houses are being constructed and sold.

7 THE COURT: Okay. And Rhodes Ranch is the project to
8 the west almost to Red Rock and Blue Diamond, right?

9 MR. HUYGENS: Yeah. It's at roughly Durango and the
10 215 --

11 THE COURT: Okay.

12 MR. HUYGENS: -- a little bit south of that, and then
13 I think, you know, just moving across the bottom here all of
14 these single-purpose landholding companies down on the bottom
15 right, Tick through Chalkline --

16 THE COURT: Um-h'm.

17 MR. HUYGENS: -- own land in a superpad condition in
18 and around Rhodes Ranch --

19 THE COURT: Okay.

20 MR. HUYGENS: -- and southwest Ranch. This is all
21 southwest-quadrant-of-the-valley property.

22 THE COURT: All right. Thank you. I think that
23 helps a lot to understand what we have --

24 MR. HUYGENS: Okay.

25 THE COURT: -- and how they interrelate.

1 MR. HUYGENS: I apologize for the earlier chart, by
2 the way.

3 THE COURT: That's all right. This one's so much
4 better.

5 Thank you.

6 And thank you again for the additional information. I
7 think that's going to be helpful to everybody. What did you
8 label it as, so that people could find it? It was --

9 MR. STANG: We --

10 THE COURT: Oh, revised organizational chart, so I
11 think that can be found and docketed.

12 MR. STANG: We filed. There's a notice of filing of
13 the chart and the backup --

14 THE COURT: Okay.

15 MR. STANG: -- and then the project summary --

16 THE COURT: Okay.

17 MR. STANG: -- within the common names.

18 THE COURT: Now, so where would you have -- like you
19 were concerned we've -- going back, it's obvious a joint
20 administration was the correct thing to do. I still think it's
21 correct that we segregated out with proof of claims, so you
22 won't be facing that fight --

23 MR. STANG: Yes.

24 THE COURT: -- in the future.

25 One clarification. I think you know this, already.

1 I was erroneously told because our staff erroneously
2 believed that the Court would send out the notices.
3 Unfortunately or fortunately, the debtor will have to do it
4 through the claims agent.

5 MR. STANG: Go --

6 THE COURT: So --

7 MR. STANG: Going out today, your Honor.

8 THE COURT: Okay. Great. Thank you. Okay.

9 Go ahead, then.

10 MR. STANG: Okay. So, your Honor, I've got the
11 document, and I think it might be a little easier to jump
12 around a little bit, and where I'd like to start, then, is on
13 page 3, item No. 5 which is the wage order.

14 THE COURT: Yes.

15 MR. STANG: That --

16 THE COURT: No. 5.

17 MR. STANG: That has been uploaded as signed off on
18 by all parties. And as I said before at the last hearing, it
19 covers all employees within the priority amount but for
20 Mr. Rhodes, and we are preparing an application for his
21 compensation, and so I don't know that I have much more --

22 THE COURT: Okay.

23 MR. STANG: -- to say about that.

24 THE COURT: So that's stipulated, then.

25 UNIDENTIFIED SPEAKER: Um-h'm.

1 THE COURT: Any objections? All right.

2 So that will be granted.

3 MR. STANG: Thank you, your Honor.

4 No. 6 is the prepetition customer programs. That has been
5 signed off on by all parties and sent up to you as a final
6 order.

7 THE COURT: All right. That's granted.

8 MR. STANG: No. 7 is cash management. We are asking
9 that that be approved on a continued interim basis because it
10 has a relationship to the cash collateral which is also we're
11 asking to have continued on an interim basis.

12 The bank has been approved as it approved a depository,
13 and I think that's been confirmed with the U.S. Trustee's
14 Office.

15 (Colloquy not on the record.)

16 MR. LANDIS: Augie Landis, Assistant United States
17 Trustee.

18 That's accurate. They moved quickly, and that's positive.

19 We're working through some additional language in the
20 order, but I expect by the 28th we'll be in good shape.

21 THE COURT: All right. So that's approved, and we'll
22 continue that until the 28th.

23 MR. STANG: Thank you.

24 No. 8 is the order authorizing sales of homes. We had
25 this done on an interim basis last time. It has worked at

1 least insofar as getting prompt lender responses.

2 And I don't know if we've actually closed any of the
3 houses, yet. But, certainly, between the debtor and the
4 lenders getting something to the title companies, that has
5 worked. That has worked fine.

6 THE COURT: So do we need a --

7 MR. STANG: That's a --

8 THE COURT: Do you need a continuance --

9 MR. STANG: We've submitted it as a final --

10 THE COURT: -- or are we all set with this one?

11 MR. STANG: We're done.

12 THE COURT: Okay. So that's approved.

13 MR. STANG: Okay. And then I'm going to jump to the
14 front which is on -- let's do utilities, your Honor, which is
15 No. 3.

16 THE COURT: All right.

17 MR. STANG: You have, actually, No. 3 and 4. One was
18 the order shortening time. That's No. 3 under Heritage, and
19 then under 4 --

20 THE COURT: Okay.

21 MR. STANG: -- was the substantive --

22 THE COURT: So 3 and 4 are the same.

23 MR. STANG: Right. By the way, your Honor, we have
24 fixed the caption.

25 THE COURT: Yes.

1 MR. STANG: There are notices in the different cases
2 that send everyone to The Rhodes Homes, a/k/a Rhodes Homes, so
3 I think we got it straightened out.

4 THE COURT: And before we conclude today, don't let
5 me forget to follow up on that case-management order --

6 MR. STANG: Yes.

7 THE COURT: -- and finishing up our omnibus dates. I
8 just --

9 MR. STANG: Okay.

10 THE COURT: I have to remind myself before I forget.

11 (Colloquy not on the record.)

12 MR. STANG: Yeah. Yeah. Go ahead.

13 MR. GRUCHOW: Kirby Gruchow on behalf of NV Energy on
14 the utility motion, your Honor.

15 THE COURT: Okay. All right. So on the utility
16 motion.

17 MR. STANG: Your Honor, we have received one response
18 from counsel. We would ask that the motion be granted except
19 as to -- is it Nevada Power --

20 MR. GRUCHOW: Nevada Power Company --

21 MR. STANG: -- Nevada Power Company.

22 MR. GRUCHOW: -- d/b/a NV Energy.

23 MR. STANG: And then counsel would like to tell you
24 what our agreement is as to them.

25 THE COURT: Okay. Now, vis-à-vis the other

1 companies, I think regardless of what happens I think the
2 procedure aspect of it is probably well-taken in the sense.

3 Now, vis-à-vis those who don't appear and have an
4 objection as to adequate assurance, I think you're right. I
5 think you can by a motion say this is what we proposed, and
6 it's sort of like a sale free and clear. If you don't object,
7 that means you have consented.

8 But the procedures aspect where they have to go through
9 all of that --

10 (Colloquy not on the record.)

11 THE COURT: -- I think imparts into the statute more
12 than it's required. Clearly, they can't do it without bringing
13 a motion.

14 So to those who didn't appear, I think I would make some
15 alterations to that procedure. We can discuss it after what we
16 hear that --

17 MR. STANG: Okay.

18 THE COURT: -- you're going to do it with
19 Nevada Energy.

20 MR. STANG: Okay.

21 MR. GRUCHOW: Thank you, your Honor.

22 We've discussed this and agree that it will be carved out
23 of the order you're going to grant with respect to all the
24 other utilities.

25 We'll have a separate stipulation order with respect to

1 the debtor entities and NV Energy. That will address 150
2 percent of the average monthly bills. It will be deposited as
3 a form of cash deposit.

4 After this hearing, we're going to work together on the
5 31 debtor entities we haven't yet audited.

6 With respect to the Rhodes Design & Development, we
7 already have an agreement of 36,810 that that will serve as the
8 postpetition security deposit, and that's 150 percent of the
9 average monthly billing.

10 Additionally, the debtor will bring any postpetition
11 amounts that are currently delinquent current. I don't know if
12 there are any, but we're going to work together on that to make
13 sure those get current.

14 They will timely pay postpetition payments in the ordinary
15 course of business. The deposits that we develop will be held
16 in security and not apply it to any billings unless the debtor
17 doesn't make a payment on time.

18 In the event the debtor doesn't make a payment on time,
19 then NV Energy has the right to use that security deposit to
20 apply to any past-due delinquency and has the right to proceed
21 with its nonbankruptcy remedies to alter, refuse, or
22 discontinue service.

23 We'll comply with all nonbankruptcy laws. We'll have that
24 in a stipulation.

25 With respect to the entities we haven't yet audited, we

1 have a conceptual agreement that that will be 150 percent of
2 the average monthly billing over the last 12 months.

3 Mr. Stang has brought up the fact that he hasn't seen
4 those numbers, so we're going to work that out between now and
5 May 15 when we expect to enter the order.

6 And, additionally, because this is a necessary and
7 critical expense to the estate, we have an agreement that this
8 is going to be treated as an administrative-expense priority
9 with respect to any unpaid postpetition delinquent amounts.

10 THE COURT: Okay. I assume there's no objection
11 that --

12 MR. STANG: Your Honor, my only comment was because
13 we are living within a cash-collateral budget, and we don't
14 know the numbers, you know, we may have some reflection on that
15 as might the Steering Committee and the different agents.

16 But before we get into a discussion of a problem not
17 knowing if there's a problem, you know, we'll --

18 THE COURT: Okay. And, of course --

19 MR. STANG: We'll just --

20 THE COURT: -- the lienholders I think recognize they
21 got to keep the utilities on, so I suspect that -- and, you
22 know, with 366 amendments, it sort of put debtors over the
23 barrel.

24 Vis-a-vis the other utilities, I'll grant the motion
25 except as to the procedures part, so let's look at that for a

1 second.

2 MR. STANG: Okay.

3 THE COURT: Part A, "If the provider is not satisfied
4 with the assurance, it must serve an objection." I need to let
5 you --

6 MR. STANG: Oh --

7 THE COURT: -- catch up with me.

8 MR. STANG: -- thank you, your Honor.

9 THE COURT: So that's on page 6 --

10 MR. STANG: Got it.

11 THE COURT: -- of --

12 MR. STANG: Got it.

13 THE COURT: -- your motion.

14 MR. STANG: Got it.

15 THE COURT: So --

16 MR. STANG: Yes.

17 THE COURT: -- if the utility provider is not
18 satisfied --

19 MR. STANG: They have to --

20 THE COURT: -- "it must serve an objection instead of
21 a written request --

22 MR. STANG: Okay.

23 (Colloquy not on the record.)

24 THE COURT: -- setting forth the location, the
25 account number, and outstanding balance, period."

1 MR. STANG: Okay.

2 THE COURT: And then it must be served on you and
3 let's say Mr. Larson.

4 MR. LARSON: Thank you, your Honor.

5 MR. STANG: Okay.

6 THE COURT: And then C is fine, and D is fine, oh,
7 except I think you should do it within ten days after the
8 request, and then you put a motion on the regular omnibus
9 calendar.

10 MR. STANG: All right.

11 THE COURT: And, of course, they have the right to
12 file a request on calendar.

13 MR. STANG: Sure.

14 THE COURT: And then E is fine.

15 MR. STANG: Okay. All right. We'll make that -- we
16 will fix the order to reflect those changes.

17 THE COURT: Okay.

18 MR. GRUCHOW: Thank you, your Honor.

19 THE COURT: All right. Thank you. All right.

20 MR. STANG: All right.

21 THE COURT: Then --

22 MR. STANG: So that --

23 THE COURT: -- we have --

24 MR. STANG: That took care of 3 and 4.

25 THE COURT: Right. And so, again, just let me make

1 the appropriate findings.

2 Again, I find that I have no evidence to the contrary that
3 wouldn't constitute adequate assurance.

4 Now, all the utilities were served, correct?

5 MR. STANG: Yes, your Honor.

6 THE COURT: Okay. So I deem their nonobjection to be
7 consent, and we have provided the adequate procedure provided
8 by the statute for modifications of those.

9 MR. STANG: Okay. Thank you --

10 THE COURT: All right.

11 MR. STANG: -- your Honor.

12 THE COURT: Thank you.

13 MR. STANG: That leaves us with two things, the
14 proposed stipulation for interim cash-collateral usage and the
15 trustee motion. Your Honor, I don't know if you've received
16 these things, but you should have received the proposed
17 stipulation --

18 THE COURT: I did.

19 MR. STANG: -- and a black-line.

20 THE COURT: I don't think I got -- I may have gotten
21 a black-line.

22 MR. STANG: But I --

23 THE COURT: But in any case --

24 THE CLERK: (Indiscernible).

25 MR. STANG: I'm not sure how long ago it was given --

1 THE CLERK: She said it was a red one.

2 MR. STANG: -- to you.

3 THE COURT: Okay.

4 MR. STANG: I'm not presuming that you've looked at
5 it.

6 THE COURT: I looked --

7 MR. STANG: And --

8 THE COURT: -- at the other one.

9 MR. STANG: Oh --

10 THE COURT: And I --

11 MR. STANG: -- and we --

12 THE COURT: I skimmed through it, and I recall what
13 it said, but this is more helpful --

14 MR. STANG: Okay.

15 THE COURT: -- to see the redline, so --

16 MR. STANG: Your Honor, at a high level, what this
17 does -- and I'll just kind of do it as a page turn. There are
18 corporate --

19 (Colloquy not on the record.)

20 MR. STANG: There's a corporation of allegations
21 regarding the second lien --

22 THE COURT: Right.

23 MR. STANG: -- which kind of takes us through page 9.
24 At various instances and not in every instance where things are
25 given or be it they rights or notices or documents to the first

1 agent, they're now being given to the second agent, but that's
2 not true --

3 THE COURT: So we'll now include --

4 MR. STANG: -- in every instance.

5 THE COURT: -- the second lienholder in this --

6 MR. STANG: Well --

7 THE COURT: -- more or less.

8 MR. STANG: -- yes. But there are certain things.

9 For example, if we want to enter into a construction
10 agreement that takes us past the cash-collateral period, we've
11 built-in protection so that those subs or third parties get
12 paid.

13 While notice of that request is given to the second agent,
14 it is the firsts' financial adviser who signs off, and the
15 seconds don't have to sign off.

16 I guess if they wanted to do something about it they could
17 come see you, but we can proceed if we don't hear from them or
18 even if they object, but don't come to you. It's only the
19 first that's the gatekeeper.

20 THE COURT: But this is the agreement of the seconds.

21 MR. STANG: Well, I'm going to have to let them say
22 that. I don't know that they've actually consented to it or
23 simply not objected or aren't objecting at this moment since
24 it's still interim.

25 THE COURT: Okay.

1 MR. STANG: We can walk through it. Do you want to
2 go through it and then have the seconds speak to that or maybe
3 counsel could do it now?

4 MR. DeAMICIS: Well, let me just introduce myself.
5 Don DeAmicis from Ropes & Gray representing Wells Fargo as
6 agent for the second lienholders, and we have worked with the
7 First Lienholders Steering Committee.

8 We are subject to an intercreditor agreement that, you
9 know, sort of defines certain rights and certain things that we
10 are sort of entitled to and not entitled to. We've worked with
11 the debtor --

12 THE COURT: Oh, okay.

13 MR. DeAMICIS: -- on this.

14 THE COURT: So it's an inter se agreement between the
15 first and the second as much as anything.

16 MR. DeAMICIS: That's correct.

17 THE COURT: Okay.

18 MR. DeAMICIS: That helps govern, you know, sort of
19 why this ends up as it is, your Honor.

20 THE COURT: Okay. All right. And I'm not sure my
21 question even made any difference. I was just curious to know
22 whether or not --

23 MR. DeAMICIS: Right.

24 THE COURT: -- it was a scream or die or a consent --

25 MR. DeAMICIS: Well, they're --

1 THE COURT: -- or what, so --

2 MR. DeAMICIS: In lieu of Mr. Huygens being deposed,
3 a lot of time was spent yesterday --

4 THE COURT: Yes.

5 MR. DeAMICIS: -- with the various constituents
6 coming to this.

7 THE COURT: Okay.

8 MR. DeAMICIS: Thank you, your Honor.

9 THE COURT: Thank you.

10 MR. STANG: So, substantively, your Honor on
11 page 10 -- and I'm sorry. I'm working off the redline now --

12 THE COURT: That's fine.

13 MR. STANG: -- we've got an extension of cash
14 collateral until the 28th.

15 The next subparagraph deals with this concept of being
16 able to enter into longer-term agreements that take us past
17 that date, and there's a subordination of claims and liens and
18 consent to use of cash collateral to finish those contracts.

19 Paragraph C is a provision that kind of resembles one that
20 was in the prior agreement regarding Pinnacle Grading, and this
21 has become kind of a specially-highlighted item because as I
22 think as I said to you before Mr. Rhodes owns approximately
23 49 percent of Pinnacle Grading.

24 And what this says is that you can get a little ahead of
25 your revenues. Your expenses can get a little -- your cash out

1 on your expenses can get a little ahead of your revenues, but
2 only to the extent of \$60,000, so there's a little flexibility
3 there.

4 There are a number of line items in D which while they're
5 on the budget can't be paid because the cutoff on the use of
6 cash collateral is before May 1, and these were May 1 items.
7 So depending on when your calendar actually permits us to come
8 back, this might take a little modification.

9 But if we're back on the 28th or 29th, and I think you had
10 given us some trustee dates maybe that we can sub in for a
11 final cash-collateral hearing, these items are really -- we're
12 going into the next period, so that's why they're highlighted.

13 On E, this is the rent that is paid to Mrs. Rhodes on
14 account of a house that some of the consultants use while
15 they're in Las Vegas.

16 The check for \$2500 for the April rent has been mailed to
17 my office, but I've been away for a day, so I'm not sure it's
18 been received, yet, and we're working towards trying to get the
19 consent to get those moneys released. Let's see.

20 Some flexibility in F for nonbudgeted items with the
21 consent of the financial adviser for the Steering Committee.
22 Let's see.

23 I'm now on page 13, your Honor. This adequate-protection
24 provision merely mirrors what was in the last one, but it does
25 add in the second lienholders.

1 But we do make clear that they're only entitled to these
2 protections, replacement liens, superpriority claims to the
3 extent they are actually secured under 506, and that takes care
4 of (indiscernible) through page 15. Let's see.

5 Page 16 has some further kind of subordinations if you
6 will to admin claims of noninsiders, but you'll notice at lines
7 12 and 13 that the exception to the admin claim for service
8 providers as to affiliates of Mr. Rhodes or the debtor has an
9 exception to the exception because Spirit Underground and
10 Freedom Underground are entities that provide underground
11 cables, utilities.

12 And the like, and the first-lien financial adviser
13 determined that those are important service providers and,
14 presumably, that they're reasonably priced, so they do get
15 admin-expense priority I guess is what the exception to the
16 exception is.

17 Paragraph C which takes us from page 16 through 17 are
18 additional fees to the first-lien representatives and be it the
19 First Lien Steering Committee counsel, agent. It's an
20 additional \$280,000, and it's still subject to the
21 recharacterization provision that we had earlier.

22 I'm skimming through now to page 20, your Honor. We're
23 dealing again here with adding the second lienholders if you
24 will to various provisions of what was otherwise already in the
25 order. This does take us through the 28th.

1 And now we're at page 20, line 23, page 20, line 23 which
2 is a determination date for the cash collateral. It is
3 essentially end of the day on the 28th.

4 (Colloquy not on the record.)

5 MR. STANG: I'm sorry, your Honor. The fees for the
6 various professionals, I think I said 285. I meant to say 185.
7 Well, I meant to say 285. I should have said 185. Let's see.

8 Skipping to page 22, there's a provision for continued
9 access by Winchester Carlyle Partners (phonetic) regarding
10 presence at the company, the ability to interview people.

11 I should say, your Honor, that one of the things that I
12 think was a lot of the bridge building and confidence building
13 that got us to today is that Mr. Dix (phonetic) and his staff
14 at Winchester Carlyle spent -- I'm not sure -- days, full days,
15 of interviewing people.

16 They interviewed people that worked on that Exhibit C
17 which was the kind of interviewee list. There were given I
18 believe over 4,000 pages of documents.

19 There was a lot of -- when you have that much contact,
20 some of those formalities break down a little bit. There was a
21 lot of exchange going on even beyond a formal-interview
22 process, and I think that really facilitated a lot of the
23 progress that we've seen and that I anticipate we'll have.

24 That is it, your Honor, on the substantive changes in the
25 proposed second stipulation.

1 We are hoping to have a final hearing on the 28th. This
2 hearing today was noticed as a final hearing, so we would like
3 to give notice only to those people who have responded or
4 otherwise --

5 THE COURT: Well, let --

6 MR. STANG: -- they appeared today.

7 THE COURT: This is just a technical question. Since
8 we only have an interim -- since this expires by its terms on
9 the 28th, this isn't really the final. This is the --

10 MR. STANG: Yes. This is not the final.

11 THE COURT: I mean, I don't have a problem with --
12 I'm not going to require additional notice --

13 MR. STANG: Right.

14 THE COURT: -- because, again, I can waive that
15 notice if there's a settlement reached in the meantime. It's
16 just different than sort of the dilemma I had before.

17 MR. STANG: Yes.

18 THE COURT: It's not really a final hearing because I
19 don't really have a final --

20 MR. STANG: Correct.

21 THE COURT: -- final.

22 MR. STANG: That's true.

23 THE COURT: But I think -- and I'll listen to
24 Mr. Landis. I think I can set a final hearing. And if you at
25 that hearing come up with something and say we now agree it

1 goes through reorganization, I don't think I have to resend
2 that out again.

3 MR. STANG: Okay.

4 THE COURT: Mr. Landis is my rules expert, my walking
5 code.

6 MR. LANDIS: But I'm not bringing it with me.

7 MR. STANG: I have one at the --

8 MR. LANDIS: No. I have one.

9 The answer, Judge, is I think that's an appropriate way to
10 proceed. This was noticed as a final cash-collateral hearing.
11 People have the opportunity to participate to the extent that
12 they desire. They chose not to.

13 You're right. We went through this at the last hearing
14 regarding what the impact is of an agreement regarding cash
15 collateral and who's required to be noticed.

16 I believe that if, in fact, just any agreement that's
17 reached in advance of the 28th is provided to parties in
18 interest, and if they have a final hearing on the 18th the
19 Court can enter an order approving cash collateral at that time
20 without further notice.

21 THE COURT: Okay.

22 (Colloquy not on the record.)

23 MR. STANG: So between now and the 28th, your Honor,
24 beyond what --

25 THE COURT: So I'll approve this --

1 MR. STANG: I'm sorry.

2 THE COURT: -- as an interim cash collateral.

3 MR. STANG: Thank you.

4 THE COURT: I find that it's appropriate --

5 MR. STANG: Okay.

6 THE COURT: -- under the facts and circumstances, and
7 so I'll approve that.

8 MR. STANG: Okay. So what we're shooting for as a
9 group -- and there's been some progress made I think even on
10 the lenders' side to start educating its constituency -- is to
11 get to a plan term sheet, and what we'll like to do on the
12 trustee motion which is on page 5. The OST is on page 5.

13 THE COURT: It's No. 1. Oh, I've got --

14 MR. STANG: No. 1 on --

15 THE COURT: No. 1 on the 10:00 o'clock calendar.

16 MR. STANG: Yes. Is to continue the trustee motion
17 to May 15th.

18 THE COURT: Okay.

19 MR. STANG: When we come back to you on the 28th --

20 THE COURT: So the trustee motion for May 15th.
21 Okay.

22 MR. STANG: Right.

23 THE COURT: Okay.

24 MR. STANG: When we come back to you on the final
25 hearing which we would like to have on the 28th --

1 THE COURT: All right.

2 MR. STANG: -- the final hearing on the cash
3 collateral, assuming that we have continued to make the
4 progress towards having a plan term sheet between the parties,
5 we would anticipate that the trustee motion would either be
6 withdrawn or go off calendar depending on what your procedures
7 are.

8 I think the lenders would prefer it to go off calendar,
9 but I don't know if you take matters off calendar or not.

10 THE COURT: I don't, but I think what you -- since
11 you filed an opposition, you can withdraw it by a stipulation,
12 so file a stipulation. I would let you withdraw it at the
13 hearing.

14 And, again, I very much appreciate the fact that you
15 called me in advance to let me know that you didn't intend to
16 go forward, but, technically, it stays on calendar until I have
17 a stipulation taking it off.

18 MR. STANG: Okay.

19 THE COURT: And that's a general practice I have
20 because I've been burned too many times by people who said, oh,
21 yeah, we have an agreement, and then it turns out they didn't
22 have an agreement.

23 MR. STANG: Right.

24 THE COURT: So that's why. But if you file the
25 stipulation in advance, then the order will take it off.

1 MR. STANG: Okay.

2 THE COURT: And, also, technically, once you file the
3 opposition, it can't just be withdrawn without consent of the
4 other party --

5 MR. STANG: Right.

6 THE COURT: -- because 7042 kicks in.

7 MR. STANG: Got it. So what we're hoping is that --

8 THE COURT: And, again, I have no problem at the
9 hearing you say, you know, withdrawing the motion --

10 MR. STANG: Right.

11 THE COURT: -- or --

12 MR. STANG: Right. So --

13 THE COURT: -- stipulating.

14 MR. STANG: So the concept is we make a lot of
15 progress up to the 28th. At 28th, we have the final cash
16 collateral, parties have felt we've made enough progress on
17 plan negotiations to vacate or take off calendar the hearing on
18 the 15th, and then we continue working to --

19 THE COURT: Yeah. It's makes so much more sense.

20 MR. STANG: -- get it done.

21 THE COURT: I think I intimated that -- well, you all
22 know this. You're experienced people. It makes so much more
23 sense to negotiate, instead of prepare for war. I mean, you
24 just lose so much energy preparing for war --

25 MR. STANG: Right.

1 THE COURT: -- and bringing up things as opposed to
2 some constructive answer to fix it from now going forward, you
3 know, whatever problems you had in the past, but now you got to
4 fix it --

5 MR. STANG: Right.

6 THE COURT: -- from going forward.

7 MR. STANG: Well, we're keeping our fingers crossed,
8 and that's all the debtors have today, your Honor.

9 THE COURT: Okay. So I assume, then, the motion to
10 strike is continued to the 15th or is that withdrawn or --

11 MS. AXELROD: Your Honor, that would also be
12 continued.

13 THE COURT: Okay.

14 MS. AXELROD: Thank you.

15 THE COURT: All right. And just so I can clear up my
16 calendar, so, really, what's being continued is item No. 2 and
17 then item No. 3 which is a duplicate of 1 since they're all
18 Rhodes matters now, so we'll continue with the Rhodes case.

19 MR. STANG: Okay.

20 THE COURT: I'm just trying to save my clerk --

21 MR. STANG: Yes.

22 THE COURT: -- from going nuts. All right.

23 Let's go through these omnibus dates and see if we can get
24 that order. That's Lake Las Vegas.

25 (Colloquy not on the record.)

1 THE COURT: And have you had a chance to look at that
2 case-management order, yet, to get one prepared? I guess,
3 arguably, we should, but, you know --

4 MR. STANG: I --

5 THE COURT: -- you --

6 MR. STANG: I thought you said you were going to --

7 THE COURT RECORDER: I'm sorry, Counsel.

8 MR. STANG: -- generate something.

9 THE COURT RECORDER: Could you speak into one of the
10 microphones? I'm sorry.

11 MR. STANG: I apologize.

12 Your Honor, my best recollection is that I thought
13 something was going to get generated out of your chambers --

14 THE COURT: Oh, okay.

15 MR. STANG: -- for us to --

16 THE COURT: And my recollection was you were going to
17 do it, but that's all right.

18 MR. STANG: You know what? I'm --

19 THE COURT: The only reason I suggest that --

20 MR. STANG: We'll take care --

21 THE COURT: -- is that --

22 MR. STANG: -- of it.

23 THE COURT: Either way. I can just use the form I
24 have, but you may think of things you'd like --

25 MR. STANG: Right.

1 THE COURT: -- in the case-management order that
2 you'd like added to those things. I don't want anything
3 deleted from that case-management order, but you may think of
4 things between the parties that, you know, in doing this case
5 this is something we'd like to add.

6 MR. STANG: We'll address ourselves to it promptly.

7 THE COURT: And then, also, you can put in that order
8 about the docket sheet, the joint administration and where to
9 look on the docket sheet, because this will go out to
10 everybody. It's going to be a road map for everybody.

11 MR. STANG: Yes.

12 THE COURT: And what was I going to say? What else
13 might be in the order?

14 We've got Court Call in there. We've got courtesy copies.
15 We've got omnibus dates. We've got setting hearings.

16 THE CLERK: I believe we (indiscernible) order at the
17 last hearing.

18 MR. STANG: We have it, your Honor.

19 THE COURT: Okay.

20 MR. STANG: Thank you.

21 THE COURT: It's the one we used in Lake Las Vegas,
22 and each iteration keeps getting a little bit --

23 MR. STANG: A little better?

24 THE COURT: -- more complete, so that's why, you
25 know, any suggestions you have I have no problem adding to

1 that.

2 MR. STANG: Okay. Your Honor, we need a time for the
3 continued cash collateral.

4 THE COURT: Okay. So that is --

5 THE CLERK: We currently had --

6 THE COURT: We currently said --

7 THE CLERK: -- 10:00 o'clock.

8 THE COURT: We currently had 10:00.

9 Nothing's been set, yet, on that calendar, right?

10 THE CLERK: I --

11 THE COURT: Do you have a problem making it --

12 THE CLERK: -- (indiscernible).

13 THE COURT: No. I mean on --

14 THE CLERK: No, no, no.

15 THE COURT: Okay. Do you want to make it 1:30,
16 instead, or would you rather have 10:00?

17 MR. STANG: I think it's easier maybe for counsel who
18 may be travelling --

19 THE COURT: You'd prefer --

20 MR. STANG: -- (indiscernible) to make it later.

21 MR. DUBLIN: Yeah. 1:30 would be great, your Honor.

22 THE COURT: Okay. Let's do 1:30.

23 THE CLERK: So that's May 15th at 1:30?

24 MR. STANG: No. This is the April --

25 THE COURT: April 28th.

1 MR. STANG: -- April 28th.

2 THE CLERK: Oh, April 28th.

3 THE COURT: So for omnibus dates, we have April 28th
4 at 1:30. That one's going to be a little different.

5 Now, nothing else can be set on that calendar as a
6 practical matter because we're within our ten days, and I can't
7 imagine anything else, you know, that's that urgent.

8 The next omnibus date is -- do you still want me to
9 reserve May 1st?

10 MR. STANG: I think we don't need May 1st.

11 THE COURT: Okay.

12 (Colloquy not on the record.)

13 MR. DUBLIN: Yeah. Phil Dublin, Akin, Gump, for the
14 First Lien Steering Committee. Your Honor, if it's possible,
15 it may make sense to reserve May 1st --

16 THE COURT: Okay.

17 MR. DUBLIN: -- because we all believe we will reach
18 agreement on cash collateral for the 28th. But in the event we
19 don't, and we have a contested hearing, and we're unable to
20 finish --

21 THE COURT: Okay.

22 MR. DUBLIN: -- within your schedule on the 28th, it
23 makes sense to go to the 1st.

24 THE COURT: All right. We won't call it an omnibus
25 day. I'll just note it on my calendar and try not to give it

1 away to somebody else.

2 MR. STANG: Okay.

3 MR. DUBLIN: Thank you.

4 THE COURT: Okay?

5 MR. STANG: And --

6 THE CLERK: And are we going to have that at
7 10:00 o'clock or 1:30, your Honor?

8 THE COURT: I may switch with Judge Nakagawa and take
9 the 1:30s afternoon, so let's say 10:00.

10 THE CLERK: 10:00?

11 THE COURT: And then I can switch back if I have to.

12 Then we have May 15th at 10:00. Again, if you prefer
13 afternoons --

14 (Colloquy not on the record.)

15 THE COURT: -- we can switch now since nothing's gone
16 out, yet --

17 MR. STANG: Please.

18 THE COURT: -- to afternoons.

19 MR. STANG: We'd like --

20 THE COURT: Afternoons, then?

21 MR. STANG: -- afternoons.

22 THE COURT: All right. So we'll make all these
23 1:30s, then.

24 THE CLERK: Except for the first one.

25 MR. STANG: Except for the May 1st.

1 THE COURT: Except the first one.

2 MR. STANG: We'll make that 10:00 still.

3 THE COURT: Then we have -- that's all we've set so
4 far, right?

5 THE CLERK: Yes, your Honor.

6 THE COURT: Do you want every two weeks, every three
7 weeks? It's okay if nothing goes on.

8 (Colloquy not on the record.)

9 MR. STANG: Let's do three weeks, your Honor.

10 THE COURT: Okay. So three weeks from May 15th is --
11 how would you feel about June 5th? It's a Friday --

12 MR. STANG: It sounds all right.

13 THE COURT: -- 1:30? And then how bad is June 26th
14 for USA?

15 (Colloquy not on the record.)

16 THE COURT: Of course, it's too early to tell.

17 THE CLERK: (Indiscernible).

18 (Colloquy not on the record.)

19 THE COURT: I only got one thing on now.

20 (Colloquy not on the record.)

21 THE COURT: All right. June 26th at 1:30.

22 MR. STANG: Okay.

23 THE COURT: And July 17th at 1:30, and --

24 MR. STANG: Do one more?

25 THE COURT: I've got August 7th. I've got

1 Lake Las Vegas in the morning or I can give you Thursday.

2 Which would you rather have?

3 MR. STANG: It doesn't matter, your Honor.

4 THE CLERK: Your Honor, I would suggest breaking it
5 up because --

6 THE COURT: The calendars get so bad.

7 THE CLERK: Yes.

8 THE COURT: Okay. August 6th. It's a Thursday at
9 1:30, and then let me give you August 27th as well.

10 THE CLERK: Okay.

11 THE COURT: And just for future planning, September
12 is going to be difficult to schedule things. So if you think
13 you're going to -- you know, once you start doing your plan and
14 calendaring and --

15 MR. STANG: Right.

16 THE COURT: -- that out --

17 MR. STANG: Right.

18 THE COURT: -- let us know sooner, rather than later.

19 MR. STANG: Right. Because I'm hoping that we're
20 going to start using some of these times for a disclosure
21 statement and, possibly, even plan confirmation.

22 THE COURT: Okay. Good.

23 MR. STANG: I don't want to be too optimistic, but a
24 lot of people.

25 THE COURT: Hope springs.

1 THE CLERK: Your Honor, on the 27th, we have
2 Chapter 13s in the afternoon.

3 THE COURT: Oh, I do, don't I?

4 THE CLERK: Yes.

5 THE COURT: I bet I could switch weeks with him.
6 Well, let's do it in the morning, then.

7 THE CLERK: Okay.

8 THE COURT: That's the only morning one.

9 THE CLERK: And do it --

10 MR. STANG: All right.

11 THE CLERK: -- at 10:00?

12 THE COURT: 9:30.

13 (Colloquy not on the record.)

14 THE COURT: Or would you rather have Friday the --
15 what did we say, the 27th?

16 MR. STANG: You said August 27th at 9:30 --

17 THE COURT: Oh, well --

18 MR. STANG: -- is what we've got.

19 THE COURT: -- let's do it the 28th, then.

20 MR. STANG: Okay. Are we still in the morning, then?

21 THE COURT: Yeah. You can have afternoon then.

22 MR. STANG: Okay.

23 THE COURT: I can't believe that I'm making you
24 people come here at Friday afternoons.

25 MR. DUBLIN: It will (indiscernible) settlement,

1 your Honor.

2 MR. STANG: That's right. Okay.

3 THE COURT: All right.

4 MR. STANG: So --

5 THE COURT: Thank you, and so all we have on the 28th
6 is our cash collateral at 1:30.

7 MR. STANG: Yes, ma'am.

8 THE COURT: All right. Good.

9 Thank you very much.

10 THE CLERK: I have --

11 MR. STANG: Thank you very much.

12 THE CLERK: -- just --

13 THE COURT: Oops, sorry.

14 THE CLERK: -- one question.

15 MR. STANG: Yes.

16 THE CLERK: I've been having a number of calls, and
17 they're wondering if (indiscernible) --

18 THE COURT: Thank you. That's what I wanted to us.

19 THE CLERK: -- set up on (indiscernible) or --

20 MR. STANG: There is a Web site functioning through
21 the noticing agent. We've had some conversations with them
22 about what they'll post and what they won't post pleading wise,
23 rather than downloading the entire document and the
24 certificates of service and the like, but it is up and
25 functioning.

1 And I don't think we were able -- well, you know what,
2 your Honor? Ms. Chubb may be able to --

3 THE COURT: Okay.

4 MR. STANG: -- tell you what --

5 THE COURT: And put in the case-management order as
6 well where people can view documents.

7 MR. STANG: Right.

8 THE COURT: Put your Web-site address in there and
9 the PACER address.

10 MR. STANG: Okay.

11 THE COURT: That's what I meant to say before I
12 forgot.

13 Thank you.

14 (Colloquy not on the record.)

15 MS. CHO: I think also for the 28th --

16 THE COURT: Name, please.

17 THE COURT RECORDER: Your appearance, please.

18 MS. CHO: Oh, Shirley Cho with the Pachulski, Stang
19 law firm for the debtors. I think also on the 28th the interim
20 cash-management --

21 MR. STANG: Yes.

22 MS. CHO: -- order will be held on a final basis.

23 THE COURT: Oh --

24 MS. CHO: -- so two matters.

25 THE COURT: -- all right.

1 Thank you.

2 And why wasn't that a final on the cash management? Oh,
3 because that was an agreement. Excuse me. You're right. That
4 had to be continued, too.

5 Thank you.

6 MS. CHO: And with respect to Omni, I was in touch
7 yesterday with the claims agent, and it is operational, the Web
8 site, and, previously, they've linked it to PACER.

9 But they are actually uploading the motions and orders, so
10 that creditors can go on-line and view it without having to log
11 into PACER.

12 THE COURT: Okay. Good.

13 Thank you.

14 MS. CHO: Um-h'm.

15 THE COURT: All right. Thank you very much.

16 MR. STANG: Thank you, your Honor.

17 UNIDENTIFIED SPEAKER: Thank you, your Honor.

18 UNIDENTIFIED SPEAKER: Thank you, your Honor.

19 THE CLERK: All rise.

20 (Court concluded at 10:33:05 a.m.)
21
22
23
24
25

1 I certify that the foregoing is a correct transcript from
2 the electronic sound recording of the proceedings in the
3 above-entitled matter.

4
5
6 /s/ Michele Phelps

05/18/09

7 _____
Michele Phelps, Transcriptionist

Date